ants committed a crime, the elements of which was established by evidence independent of the lack of explanation as was done in *Crawley, Graves, Wilson* and others.

The Court of Appeals, in its decision on August 21, 1962, either engaged in assuming evidence that was not introduced in the trial of the petitioners in the District Court, or took judicial notice of facts which cannot be proven by judicial notice. "The matters of which a court will take judicial notice must be a subject of common and general knowledge. In other words, judicial notice of facts is measured by general knowledge of the same facts. A fact is said to be generally recognized or known when its existence or operation is accepted by the public without qualification or contention". *Waters-Pierce Oil Co.* v. *Deselms*, 212 U. S. 159, 20 Am. Jur. 49.

In its opinion, the Court of Appeals, at page 7, stated "the evidence does not disclose the actual residence of either Ragland or Williams. However, both vehicles involved bore Virginia license plates and the truck was titled in the name of a resident of Hanover, Virginia, near Richmond. It would be strange indeed for residents of that vicinity to come all the way to Baltimore to purchase sugar". No evidence, as was stated by the court, of the defendants' residence was introduced. The mere fact of being in vehicles registered in Virginia does not permit the assumption that the occupants are Virginia residents. The Court of Appeals on page 7 of its decision indulged in the assumption, apparently by judicial notice that ownership or possession of an automobile equipped with overload springs and a switch for extinguishing the rear lights of an automobile without extinguishing the front lights, established that the owner or operator was in the whiskey business. Not one scintilla of evidence that an automobile so equipped is used in the whiskey business was introduced in the District Court and

it is respectfully submitted that the court could not take judicial notice of such a fact.

The Court of Appeals further paid little attention, if any, to the evidence introduced in the District Court. The Court of Appeals at pages 3 and 6 of its decision stated that the petitioners participated in the purchase of money orders which was to be used to purchase the sugar, that they traveled by cab to the American Express Company and went into the office of the American Express Company and purchased certain money orders and further, that the petitioners participated in the arrangements for the purchase of the sugar. In the District Court the Government's witness, Somers, did testify on direct examination that the petitioners accompanied him and one Victor to the American Express Office and did participate in the arrangements for the purchase of the sugar, however, on cross-examination, at page 147 of the Reporter's Transcript, the witness, Somers, admitted that he was erroneous in so testifying.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be granted in order to protect the petitioners' individual rights and to correct the erroneous theory of law contained in the decisions of the Court of Appeals. This decision, it is respectfully submitted, establishes that the Government need only prove a defendant to be possessed of a quantity of sugar in order to convict under 26 U. S. C. A. 5686.

Respectfully submitted,

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